

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FAIRLY W. EARLS,

Plaintiff,

v.

STATE OF WISCONSIN, et al.

Defendants.

ORDER

15-cv-493-wmc
App. No. 16-3937

A final judgment was entered in this case on November 8, 2016, following this court's dismissal of all claims brought by plaintiff Fairly W. Earls as barred under the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994). Earls has now filed a notice of appeal. Because he has not paid the \$505.00 appellate docketing fee, he presumably requests leave to proceed *in forma pauperis* on appeal.

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that: (1) he is indigent; and (2) the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). Although Earls may qualify as indigent, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous. See *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). To the extent that Earls is attempting to raise on appeal the same legally barred claims he raised in his complaint, the court certifies that the appeal is

not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). Accordingly, his implicit request for leave to proceed *in forma pauperis* on appeal must be denied.

Although this court has certified that the appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), Earls is advised that he may challenge this certification under Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, *within thirty (30) days of the date of this order*.

ORDER

IT IS ORDERED that:

1. The court CERTIFIES that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3).
2. Plaintiff Fairly W. Earls's request for leave to proceed *in forma pauperis* on appeal is DENIED.

Entered this 29th day of November, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge